IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.20239 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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J.K.PAPER LTD & 1 - Petitioner(s)
Versus
UNION OF INDIA & 2 - Respondent(s)

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Appearance :
MR PARESH M DAVE for Petitioner(s) : 1 - 2.
MR JITENDRA MALKAN for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 09/12/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. When the matter is called out Mr.Malkan prays for time to tender affidavit-in-reply. However, the request is rejected in light of the facts on record

and the view that the Court is inclined to take.

2. Heard Mr.Paresh M. Dave and Mr.Malkan appearing respectively for the petitioners and the respondent. RULE, returnable today. Mr.Malkan waives service. The petition is taken up for final hearing and disposal with the consent of the learned counsel.

3. This petition challenges final order No.704/03-B dated 26th September, 2003 (Annexure-F) whereby the appeal of the petitioners came to be dismissed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi Bench (CESTAT/Tribunal), as well as Misc. Order No.76/2004-B dated 25th June, 2004 (Annexure-H) passed by the CESTAT rejecting the application for rectification of mistake.

4. As can be seen from the impugned orders made by the Tribunal it has not recorded any independent finding but merely relied upon its own decision in the case of CCE, Madras Vs. Addison & Company, 1997 (93) ELT 429 while passing both the final order and the miscellaneous order. The dispute between the parties pertains to the claim of refund in respect of the

element of duty included in the cash discount passed on by the petitioners, between July 2000 to July 2001, to the purchasers of the products of the petitioners.

5. The learned advocate for the petitioners has invited attention to a decision of High Court of Madras in the case of Addison & Company Vs. Commissioner of Central Excise, Madras, 2001 (129) ELT 44 (Mad.) to submit that the order of the Tribunal, on which the impugned orders of the Tribunal are based, has since been reversed by the High Court in the aforesaid decision. On behalf of the respondent authorities this fact has not been controverted, though during the course of hearing a faint attempt was made to seek time to ascertain as to whether decision of High Court of Madras has been accepted by the revenue or not.

6. In the aforesaid decision in the case of Addison & Company (supra) High Court of Madras has held that the Tribunal had committed an error in holding that the assessee was not entitled to refund despite the assessee having proved that it had not passed on the

incidence of duty to its buyers even when all other conditions prescribed by Section 11B of the Central Excise Act, 1944 stood satisfied.

7. In the present case, as already noticed, the CESTAT has not recorded any findings of fact, nor has adverted to the contentions on behalf of the petitioners and the evidence produced by the petitioners in support of its contention that it had not passed on the incidence of duty to the buyers of the goods of the petitioners.

8. In these circumstances, the impugned orders of the Tribunal cannot be permitted to stand and are hereby quashed and set aside. As a consequence appeal bearing No.E-948/03-B stands restored to file of the Tribunal. The Tribunal is directed to record correct and complete facts, after taking into account the contentions of both the sides as well as the evidence that may be placed on record by both the sides before it, after giving full and reasonable opportunity of hearing to both the sides. The Tribunal shall thereafter record its findings and conclusions taking into account not only the

aforesaid decision of High Court of Madras but any other decision that may be brought to it notice by either side.

9. Accordingly, final order No.704/03-B dated 26th September, 2003 (Annexure-F) and Misc. Order No.76/04-B dated 25th June, 2004 (Annexure-H) are hereby quashed and set aside, subject to the aforesaid directions. Rule is made absolute. The petition stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**